

and Health Poster for private and public employees was approved by the Assistant Secretary on May 20, 1976.

(b) Amendments in the Kentucky enabling legislation were enacted to include (1) a division of occupational safety and health compliance and a division of education and training (KRS 333.153(a)) and (2) authority and procedures for granting temporary variances. Penalties for willful violations causing death of an employee are covered under KRS chapters 434, 503 and 534.

(c) An amended Kentucky Administrative Procedure Act (KRS chapter 13) provides procedures for promulgation of standards and administrative regulations including emergency temporary standards.

(d) Kentucky regulations governing recordkeeping and reporting (parallel to the Federal 29 CFR part 1904), inspections, citations, proposed penalties (parallel to the Federal 29 CFR part 1903) and variances (parallel to the Federal 29 CFR part 1905) were initially approved with the State plan on July 31, 1973. These regulations were expanded to provide for:

- (1) Penalties for failure to correct violations;
- (2) Mandatory penalties for failure to post a citation;
- (3) Procedures for petition for modification of abatement dates and
- (4) Procedures for granting temporary variances.

In addition, Kentucky adopted regulations pertaining to employee access to information on exposure to toxic materials or harmful physical agents.

(e) A manual Management Information System was implemented in July, 1975, and converted to an automated system in July, 1977.

(f) The personnel operations of the Kentucky Department of Labor and the servicing merit system agency have been found to be in substantial conformity with the "Standards for a Merit System of Personnel Administration" by letter of the Secretary of Labor dated May 17, 1977. In addition, a Kentucky Department of Labor affirmative action plan to promote equal employment opportunity has been judged acceptable by the Regional Office of

Personnel Management by letter dated February 12, 1979.

(g) Kentucky revised regulations governing the operation of the Kentucky Occupational Safety and Health Review Commission were promulgated in December, 1975.

(h) A revised Kentucky Compliance Manual was initially submitted in July, 1976, and subsequently amended in response to Federal comment to reflect changes in Federal procedures through December 20, 1976.

(i) By executive orders 74-374 and 77-573 dated May 15, 1974, and June 30, 1977, respectively, the Governor of Kentucky made the following changes in the organization of the Kentucky Occupational Safety and Health Program:

(1) All occupational health functions except laboratory services were transferred from Kentucky Department of Human Resources to the Kentucky Department of Labor.

(2) Responsibilities for coverage of employees of public utilities were transferred from the Kentucky Public Service Commission to the Kentucky Department of Labor.

(j) A Kentucky Public Employee plan has been adopted by the State.

(k) In accordance with §1902.34 of this chapter, the Kentucky occupational safety and health plan received certification, effective February 8, 1980, as having completed all developmental steps specified in its plan as approved on July 31, 1973, on or before July 31, 1976. This certification attests to structural completion, but does not render judgment on adequacy of performance.

[41 FR 21774, May 28, 1976, as amended at 41 FR 34252, Aug. 13, 1976; 45 FR 8596, 8598, Feb. 8, 1980. Redesignated at 50 FR 24896, June 13, 1985]

#### § 1952.233 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL-CIO v. Marshall* compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984 Kentucky, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing

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benchmarks of 23 safety and 14 health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on June 13, 1985.

### § 1952.234 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR part 1902, and after determination that the State met the “fully effective” compliance staffing benchmarks as revised in 1984 in response to a Court Order in *AFL-CIO v. Marshall* (CA 74-406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the Kentucky State plan for a period of at least one year following certification of completion of developmental steps (45 FR 8596). Based on the 18(e) Effectiveness Report for the period of October 1982 through March 1984, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Kentucky’s occupational safety health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, the Kentucky plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective June 13, 1985.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Kentucky. The plan does not cover private sector maritime employment; employment at Tennessee Valley Authority facilities; military bases; properties ceded to the U.S. Government; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of

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the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in “agricultural employment” within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Kentucky retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

(c) Kentucky is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

[50 FR 24896, June 13, 1985, as amended at 62 FR 2562, Jan. 17, 1997; 65 FR 36624, June 9, 2000]

### § 1952.235 Level of Federal enforcement.

(a) As a result of the Assistant Secretary’s determination granting final approval to the Kentucky plan under section 18(e) of the Act, effective June 13, 1985, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Kentucky plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(b) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct